APPENDIX

New York Civil Practice Act, §§ 1437, 1438, 1439 and 1440

§ 1437. **Redemption by Lessee.** Where the special proceeding is founded upon an allegation that a lessee holds over after a default in the payment of rent, and the unexpired term of the lease under which the premises are held exceeds five years at the time when the warrant is issued the lessee, his executor, administrator or assignee, at any time within one year after the execution of the warrant, unless by the terms of the lease such lessee shall have heretofore waived or shall hereafter waive his right to redeem, or such lessee, executor, administrator or assignee shall have subsequently waived the right to redeem by a written instrument filed and recorded in the office in which the lease is recorded, or if not so recorded, in the office in which deeds are required to be recorded of the county in which the leased premises are located, may pay or tender to the petitioner, his heir, executor, administrator or assignee, or if, within five days before the expiration of the year, he cannot be found, with reasonable diligence, within the city or town wherein the property or a portion thereof is situated, then to the judge or justice who issued the warrant, or his successor in office, all rent in arrear at the time of the payment or tender with interest thereupon and the costs and charges incurred by the petitioner. Thereupon the person making the payment or tender shall be entitled to the possession of the demised premises under the lease and may hold and enjoy the same according to the terms of the original demise, except as otherwise prescribed in the next section but one.

§ 1438. **Redemption by Creditor of Lessee.** In a case specified in the last section, a judgment creditor of the lessee whose judgment was docketed in the county before the precept was issued, or a mortgagee of the lease whose mort-

gage was duly recorded in the county before the precept was issued, unless by the terms of the lease the lessee shall have waived his right to redeem, or such lessee, or his executor, administrator or assignee shall have subsequently waived the right to redeem by a written instrument filed and recorded in the office in which the lease is recorded, or if not so recorded, in the office in which deeds are required to be recorded of the county in which the leased premises are located before such judgment was docketed or such mortgage recorded, or such judgment creditor or mortgagee himself shall have waived in writing his right to redeem, may at any time before the expiration of one year after the execution of the warrant, unless a redemption has been made as prescribed in the last section, file with the judge or justice who issued the warrant, or with his successor in office, a notice specifying his interest and the sum due to him, describing the premises, and stating that it is his intention to redeem as prescribed in this section. If a redemption is not made by the lessee, his executor, administrator or assignee within a year after the execution of the warrant, the person so filing a notice, or, if two or more persons have filed such notices the one who holds the first lien, at any time before two o'clock of the day, not a Sunday or a public holiday, next succeeding the last day of the year, may redeem for his own benfit in like manner as the lessee, his executor, administrator or assignee might have so redeemed. Where two or more judgment creditors or mortgagees have filed such notices, the holder of the second lien may so redeem at any time before two o'clock of the day, not a Sunday or a public holiday, next succeeding that in which the holder of the first lien might have redeemed; and the holder of the third and each subsequent lien may redeem in like manner at any time before two o'clock of the day, not a Sunday or a public holiday, next succeeding that in which his predecessor might have redeemed. But a second or subsequent redemption is not valid unless the person redeeming pays or tenders to each of his predecessors who has redeemed the sum paid by him to redeem and also the

sum due upon his judgment or mortgage; or deposit those sums with the judge or justice for the benefit of his predecessor or predecessors.

§ 1439. **Effect of Redemption Upon Lease.** Where a redemption is made, as prescribed in either of the last two sections, the rights of the person redeeming are subject to a lease, if any, executed by the petitioner since the warrant was issued, so far that the new lessee, his assigns, undertenants, or other representatives, upon complying with the terms of the lease, may hold the premises so leased until twelve o'clock, noon, of the first day of May next succeeding the redemption. And in all other respects, the person, so redeeming, his assigns and representatives succeed to all the rights and liabilities of the petitioner under such a lease.

§ 1441. **Order to be Made Thereon; Liability of Persons Redeeming.** The person redeeming, as prescribed in the last three sections or the owner of the property so redeemed, may present to the judge or justice who issued the warrant, or to his successor in office, a petition duly verified setting forth the facts of the redemption and praying for an order establishing the rights and liabilities of the parties upon the redemption. Whereupon the judge or justice must make an order requiring the other party to the redemption to show cause before him at a time and place therein specified why the prayer of the petition should not be granted. The order to show cause must be made returnable not less than two nor more than ten days after it is granted; and it must be served at least two days before it is returnable. Upon the return thereof, the judge or justice must hear the allegations and proofs of the parties and must make such a final order as justice requires. The costs and expenses must be paid by the petitioner. The final order, or a certified copy thereof, may be recorded in like manner as a deed. A person, other than the lessee, who redeems as prescribed in the last three sections succeeds to all the duties and liabilities of the lessee accruing after the redemption as if he was named as lessee in the lease.